CM/ECF J.VF.081-S. District Court for the District of New Jersey/08/26ket Report of 3 Page 1 of

ARBITRATION, CLOSED

U.S. District Court

Bistrict of New Jersey [LIVE] (Trenton)

CIVIL DOCKET FOR CASE #: 3:07-cv-01712-GEB-JJH Internal Use Only

NOVELLA et al v. FERGUSON et al

Assigned to: Chief Judge Garrett E. Brown, Jr. Referred to: Magistrate Judge John J. Hughes

Cause: 28:1332 Diversity-Personal Injury

Date Filed: 04/12/2007 Date Terminated: 05/25/2007 Jury Demand: Plaintiff

Nature of Suit: 350 Motor Vehicle

Jurisdiction: Diversity

Plaintiff

ROSE ANN NOVELLA

represented by JEAN E. DONOGHUE-SIMON

1433 HOOPER AVENUE

SUITE 212

TOMS RIVER, NJ 08754-4919

(732) 286-6900

Email: jedslaw@aol.com LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Plaintiff

ROSARIO NOVELLO

her husband

represented by JEAN E. DONOGHUE-SIMON

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

V.

Defendant

CARL FERGUSON

represented by JOHN LEE MCDERMOTT, JR.

MC DERMOTT & MC GEE

75 MAIN STREET P.O. BOX 192

MILLBURN, NJ 07041

(973) 467-8080

Email:

jmcdermott@mcdermottandmcgee.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant

ROSE FERGUSON

represented by JOHN LEE MCDERMOTT, JR.

(See above for address) *LEAD ATTORNEY*

ATTORNEY TO BE NOTICED

Defendant

JOHN DOE 1-5

(fictitious names)

Defendant

ABC CORPORATIONS 1-5

(fictitious names), jointly, severally, and in the alternative

Date Filed	#	Docket Text
04/12/2007	•1	COMPLAINT against ABC CORPORATIONS 1-5, CARL FERGUSON, ROSE FERGUSON, JOHN DOE 1-5 (Filing fee \$ 350 receipt number 356818.) jury demand, filed by ROSE ANN NOVELLA, ROSARIO NOVELLO. (Attachments: # 1 Civil Cover Sheet)(ce3) (Entered: 04/12/2007)
04/12/2007	•	ATTENTION COUNSEL - As of May 1, 2006, Civil initial pleadings such as complaints and notices of removal must be filed electronically. Payment of the filing fee is made via the internet (pay.gov). Visit our website at www.njd.uscourts.gov for additional information. In the future, to expedite the processing of the initial pleadings, counsel is requested to file complaints and notices of removal electronically. (ce3) (Entered: 04/12/2007)
04/12/2007	•2	Summons Issued as to ABC CORPORATIONS 1-5, CARL FERGUSON, ROSE FERGUSON, JOHN DOE 1-5. Mailed to Counsel (Days Due - 20). (ce3) (Entered: 04/12/2007)
04/12/2007	3	CASE REFERRED to Arbitration. (ce3) (Entered: 04/12/2007)
05/07/2007	•3	MOTION to Change Venue by CARL FERGUSON, ROSE FERGUSON. (MCDERMOTT, JOHN) (Entered: 05/07/2007)
05/08/2007		Setting Deadlines as to 3 DEFICIENT MOTION to Change Venue. [NO BRIEF] Motion set for 6/4/2007 10:00 AM in Trenton - Courtroom 4E before Chief Judge Garrett E. Brown, Jr. (PLEASE NOTE THAT PURSUANT TO FED. R. CIV. P. 78 AND LOCAL RULE 7.1(B)(4), NO ORAL ARGUMENT WILL BE HELD IN THIS MATTER AND PARTIES SHOULD NOT APPEAR UNLESS SPECIFICALLY DIRECTED TO DO SO BY THE COURT.) (ij,) (Entered: 05/08/2007)
05/10/2007	3	(Court only) Motions No Longer Referred: 3 MOTION to Change Venue (dg,) (Entered: 05/10/2007)
05/15/2007	34	BRIEF in Support re 3 MOTION to Change Venue filed by CARL FERGUSON, ROSE FERGUSON. (MCDERMOTT, JOHN) (Entered: 05/15/2007)
05/25/2007	9 5	ORDER granting 3 Motion to Change Venue and transferring case to Southern District of New York Signed by Judge Garrett E. Brown, Jr. on

		5/24/2007. (ss,) (Entered: 05/29/2007)
05/25/2007	•	***Civil Case Terminated. (ss,) (Entered: 05/29/2007)

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LAW OFFICE OF JEAN DONOGHUE-SIMON 1433 HOOPER AVENUE, SUITE 212 P.O. BOX 4919 TOMS RIVER, NJ 08754-4919 732-286-6900

Attorneys for Plaintiffs, Rose Ann Novella and Rosario Novella

ROSE ANN NOVELLA and ROSARIO NOVELLA, her husband,

Plaintiffs,

V.

CARL FERGUSON and ROSE FERGUSON, JOHN DOE 1-5 (fictitious names), ABC CORPORATION 1-5 (fictitious names), jointly, severally and in the alternative,

Defendants.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW **JERSEY**

Civil Action 07-17/2 (66B)

COMPLAINT, JURY DEMAND AND DESIGNATION OF TRIAL COUNSEL

Plaintiffs, Rose Ann Novella and Rosario Novella, residing at 224 Lantern Place in the Borough of Tuckerton, County of Ocean, and State of New Jersey, by way of Complaint against defendants, say:

JURISDICTION AND VENUE

- 1. The Court has jurisdiction over this action pursuant to 28 U.SC. 1332.
- 2. Venue is proper in this District since there is diversity of all parties.

FIRST COUNT

- 1. On or about April 15, 2005, plaintiff, Rose Ann Novella, was the owner and operator of a motor vehicle, which was exiting the Newburgh Mall traveling in a southeasterly direction on Route 300, in the Township of Newburgh, County of Orange and State of New York.
- 2. At the time and place aforesaid, defendant, Carl Ferguson, was the operator of a motor vehicle owned by Rose Ferguson, which was traveling in a southerly

direction on Route 300, in the Township of Newburgh, County of Orange and State of New York.

- 3. At the time and place aforesaid, defendant, Rose Ferguson, owned, operated, maintained, and/or repaired the motor vehicle related to any allegations made in this Complaint.
- 4. At the time and place aforesaid, defendants Carl Ferguson and Rose Ferguson resided at 10 Estate Boulevard in the City of Newburgh, County of Orange, State of New York.
- 5. At the time and place aforesaid, defendants, John Doe 1-5 (fictitious names), were unknown persons or entitles who owned, operated, maintained, and/or repaired motor vehicles related to any allegations made in this Complaint.
- 6. At the time and place aforesaid, defendants, ABC Corporation 1-5 (fictitious names), who owned, operated, maintained and/or repaired motor vehicles related to any allegations made in this Complaint.
- 7. At the time and place aforesaid, defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), owed plaintiff a duty to operate, maintain, and/or repair the motor vehicle in a reasonably prudent and safe manner so as not to cause harm to the plaintiff.
- 8. At the time and place aforesaid, defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), breached said duty and so negligently and carelessly operated, maintained and/or repaired their motor vehicle so as to cause the motor vehicle being operated by the defendant aforesaid to strike plaintiff, Rose Ann Novella.

9. As a direct and proximate result of the aforesaid carelessness, and negligence of defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly and/or severally, and in the alternative, plaintiff was caused to suffer severe, multiple and permanent bodily injuries, has suffered and continues to suffer great pain and anguish, has incurred and will continue to incur expenses for medical care and treatment, has been and will continue to be unable to engage in his usual duties and activities, and as otherwise sustained damages.

WHEREFORE, plaintiff, Rose Ann Novella, demands judgment against defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly, severally and in the alternative, for damages, interest, costs of suit, and such other relief as the Court deems equitable and just.

SECOND COUNT

- Plaintiff, Rosario Novella, repeats and realleges the allegations of the First
 Count of the Complaint as though set forth more fully herein at length.
 - 2. Plaintiff, Rosario Novella, is the husband of plaintiff, Rose Ann Novella.
- 3. As the result of the injuries suffered by his wife as aforesaid, plaintiff, Rosario Novella, was deprived of the services, society and consortium of his wife from the time of the accident until the present, and will in the future continue to suffer said loss of services, society and consortium.

WHEREFORE, plaintiff, Rosario Novella, demands judgment against defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly, severally and in the alternative, for damages, interest, costs of suit, and such other relief as the Court deems equitable and just.

JURY DEMAND

PLEASE TAKE NOTICE that the plaintiffs demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Plaintiffs hereby designate Jean Donoghue-Simon, Esquire as trial counsel on the within cause pursuant to the R.4:24-4

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)

Pursuant to \underline{R} . 4:5-1, the matter in controversy is not the subject of any other action pending in any Court or in any pending arbitration proceeding, nor is any arbitration proceeding contemplated. Plaintiffs are not aware of any other parties, which should be joined in this action.

LAW OFFICE OF JEAN DONOGHUE-SIMON Attorneys for Plaintiffs

JEAN DONOGHUE MMON, ESQ.

DATED: April 10, 2007

CaSaste 07708ve0/4070 249-FRBAIKIH Dottomment 1-3-2. File illedit 03/8/12/02/807 Patgaegte of of 1 CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filling and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating

the civil docket sheet. (SEE IN	ISTRUCTIONS ON THE REVERSE OF THE FORM,)							
I. (a) PLAINTIFFS		DEFENDANTS		 -				
·	of First Listed Plaintiff OCEAN XCEPT IN U.S. PLAINTIFF CASES) Address, and Telephone Number; (732) 286 ON OShule - Stricon OOPLE Ave, Suite 212, 1045 Pg	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. G900 Attorneys (If Known)						
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II. BASIS OF JURISD	ICTION (Place an "X" in One Box Only)		PRINCIPAL PARTIES	(Place an "X" in One Box for Plaintiff				
□ 1 U.S. Government Plaintiff	☐ 3 Federal Question (U.S. Government Not a Party)		TF DEF					
☐ 2 U.S. Government Defendant	Ox4 Diversity (Indicate Citizenship of Parties in Item III)		2 Incorporated and of Business In	Another State				
		Citizen or Subject of a Foreign Country	3 3 □ 3 Foreign Nation	П 6 : П 6				
IV. NATURE OF SUIT	P (Place an "X" in One Box Only)	1-110						
CONTRACT 110 Insurance 120 Manne 1318 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Einforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (fixel, Veturans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Ton Product Liability 290 All Other Real Property	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 350 Motor Vehicle Product Liability 360 Other Personal Asso Other Personal Injury CIVIL RIGHTS 441 Voting 443 Housing/ Accommodations 444 Welfare 445 Amer. w/Disabilities - Limployment 445 Amer. w/Disabilities - Cother 446 Amer. w/Disabilities - Cother 440 Other Civil Rights	G20 Other Food & Drug	SANKRUPTCY	OTHER STATUTES □ 400 State Reapportionment □ 410 Antitrust □ 430 Banks and Banking □ 450 Commerce □ 460 Deportation □ 470 Racketeer Influenced and Corrupt Organizations □ 480 Consumer Credit □ 490 Cable/Sat TV □ 810 Selective Service □ 850 Securities/Commodities/ Exchange □ 875 Customer Challenge □ 12 USC 3410 □ 890 Other Statutory Actions □ 891 Agricultural Acts □ 892 Feconomic Stabilization Act □ 893 Environmental Matters □ 894 Energy Allocation Act □ 895 Freedom of Information Act □ 900Appeal of Fee Determination Under Equal Access to Justice □ 950 Constitutionality of State Statutes				
N Original O 2 R	Cite the U.S. Civil Statute under which you Brief description of cause:	Reinstated or anoth (special are filing (Do not cite jurisdiction						
VII. REQUESTED IN COMPLAINT:	☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	VELLCLE ACCIDIA IN DEMANDS 500,00	CHECK YES only JURY DEMAND:	if demanded in complaint:				
VIII. RELATED CASI IF ANY	(Sec instructions): JUDGE		DOCKET NUMBER —					
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FOR OFFICE USE ONLY RECEIPT # A	MOUNT APPLYING IFP	JUDGE	MAG. JUI	OGE				

SUMMONS

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Civil Action

ROSE ANN NOVELLA and ROSARIO NOVELLA, her husband,

Plaintiffs.

v.

CARL FERGUSON and ROSE FERGUSON, JOHN DOE 1-5 (fictitious names), ABC CORPORATION 1-5 (fictitious names), jointly, severally and in the alternative,

Defendants.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Civil Action No: 07-CV-1712(688)

Civil Action

COMPLAINT, JURY DEMAND AND DESIGNATION OF TRIAL COUNSEL

To the above named defendants

You are hereby summoned and required to serve upon Jean Donoghue-Simon, Esq,
Plaintiff's attorney, whose address is: 1433 Hooper Ave, Suite 212, Toms River, N.J., an
Answer to the Complaint, which is hereby served upon you, within days after the
service of this summons upon you, exclusive of the day of service. If you fail to do so,
judgment by default will be taken against you for the relief demanded in the Complaint.

WILLIAM T. WALSH, CLERK

Clerk of the Court

Dated: 4-12-07

Charmaine D. Ellengton, Deputy Clerk MC DERMOTT & MC GEE, LLP
75 Main Street, Suite 305
P.O. Box 192
Millburn, NJ 07041
973-467-8080
Attorneys for Defendants: Carl Ferguson and Rose Ferguson

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY Civil Action No: 07-CV-1712 (GEB)

Plaintiff(s),

ROSE ANN NOVELLA and ROSARIO NOVELLA, her husband,

-VS-

Defendants,

CARL FERGUSON, ROSE FERGUSON, JOHN DOE 1-5 (fictitious names), ABC CORPORATION 1-5 (fictitious names), jointly, severally and in the alternative

NOTICE OF MOTION FOR AN ORDER TO CHANGE VENUE, PURSUANT TO Civ.R. 12(b)(3)

TO: LAW OFFICE OF JEAN DONOGUE-SIMON Attorneys for Plaintiffs 1433 Hopper Avenue, Suite 212 P.O. Box 4919 Toms River, NJ 08754-4919

COUNSEL:

PLEASE TAKE NOTICE that the undersigned, counsel for defendants, Carl Ferguson and Rose Ferguson, shall apply before the Honorable Garrett E. Brown, at the United States District Court, District

Case 8:70 78 20 0 0 1 2 9 2 1 1 1 1 7 7 Page 2 2 5 ft 7 7

of New Jersey, at the Clarkson S. Fisher Building & U.S. Courthouse, 402 East Stage Street, Trenton,

New Jersey, on a date certain to be set down by this Court, seeking an Order changing the venue of the

within litigation from the District of New Jersey to the Southern District of New York, pursuant to Civ.

R. 12(b)(3).

Counsel will rely upon the annexed Certification of Counsel in support hereto.

TAKE FURTHER NOTICE that a proposed form of Order is annexed hereto.

MC DERMOTT & MC GEE

John L. McDermott, Jk (27

Dated: May 7, 2007

MC DERMOTT & MC GEE, LLP
75 Main Street, Suite 305
P.O. Box 192
Millburn, NJ 07041
973-467-8080
Attorneys for Defendants: Carl Ferguson and Rose Ferguson

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY Civil Action No: 07-CV-1712 (GEB)

Plaintiff(s),

ROSE ANN NOVELLA and ROSARIO NOVELLA, her husband,

-VS-

Defendants,

CARL FERGUSON, ROSE FERGUSON, JOHN DOE 1-5 (fictitious names), ABC CORPORATION 1-5 (fictitious names), jointly, severally and in the alternative

CERTIFICATION OF COUNSEL

JOHN L. McDERMOTT, JR. being of full age, hereby certifies as follows:

- 1. I am an Attorney-At-Law of the State of New Jersey and am a member of the firm of McDermott and McGee, LLP.
- 2. We have been retained to represent Carl Ferguson and Rose Ferguson in connection with the above-entitled litigation.
- 3. This law suit arises out of a motor vehicle accident which occurred on April 15, 2005 on Route 300 at the intersection with the entrance/exit to the Newburgh Mall in Newburgh, New York.

(See copy of police report annexed hereto as Exhibit "A".)

- 4. Plaintiffs Rose Ann Novella and Rosario Novella have filed suit in the United States District Court for the District of New Jersey citing, as the basis for their suit, diversity of citizenship and amount in controversy in excess of sum or value of \$75,000.00, pursuant to 28 U.S.C. 1332. Plaintiffs also allege that the venue is proper in the District of New Jersey as there is diversity of all parties. (See copy of plaintiffs' Complaint annexed hereto as Exhibit "B".)
- 5. The venue in this matter is improper. Defendants, Carl Ferguson and Rose Ferguson, the only defendants, are both residents of Newburgh, New York. The incident, which gives rise to this litigation, occurred in Newburgh, New York. Therefore, pursuant to 28 U.S.C. §1391(a), this matter should be venued in the United States District for the Southern District of New York.
- 6. 28 U.S.C. §1391(a) states "(a) civil action wherein jurisdiction is founded only on diversity of citizenship may, except as other-wise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim, occurred . . . , or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought." Here, the suit is based upon diversity of citizenship. Both defendants reside in Newburgh, New York which is situated within the Southern District of New York. The accident giving rise to this litigation occurred in Newburgh, New York which is situated in the Southern District of New York. Therefore, pursuant to Civ. R. 12(b)(3), venue in this matter should be changed to the Southern District of New York.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: May 7, 2007

JOHN L. McDERMOTT, JR.(2779)

Exhibit "A"

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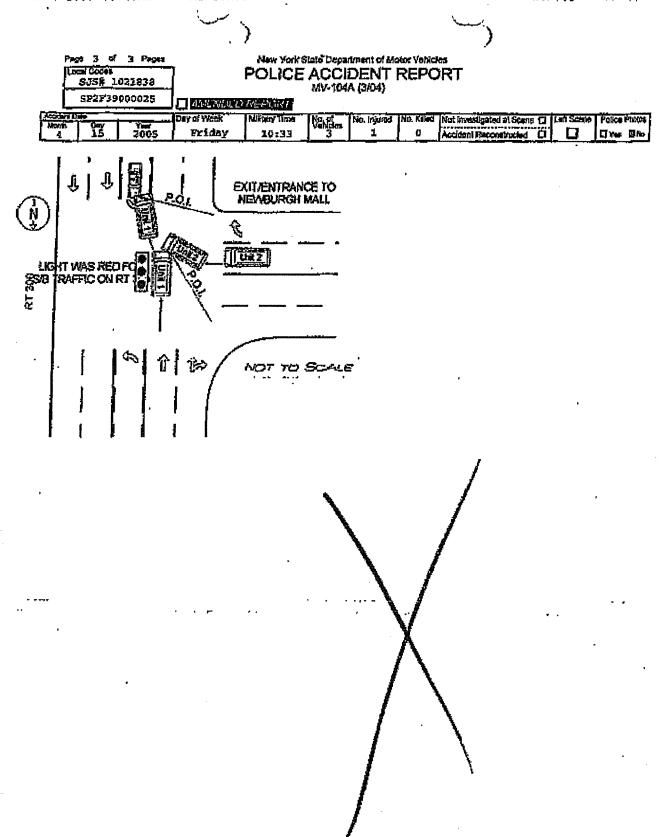


Exhibit "B"

LAW OFFICE OF JEAN DONOGHUE-SIMON
1433 HOOPER AVENUE, SUITE 212
P.O. BOX 4919
TOMS RIVER, NJ 08754-4919
732-286-6900
Attorneys for Plaintiffs, Ross Ann Novella and Rosario Novella

ROSE ANN NOVELLA and ROSARIO NOVELLA, her husband.

Plaintiffs.

٧.

CARL FERGUSON and ROSE FERGUSON, JOHN DOE 1-5 (fictitions names), ABC CORPORATION 1-5 (fictitious names), jointly, severally and in the alternative.

Defendants.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Civil Action

COMPLAINT, JURY DEMAND AND DESIGNATION OF TRIAL COUNSEL

07-CV-1712 (GEB)

Plaintiffs, Rose Ann Novella and Rosario Novella, residing at 224 Lantern Place in the Borough of Tuckerton, County of Ocean, and State of New Jersey, by way of Complaint against defendants, say:

JURISDICTION AND VENUE

- 1. The Court has jurisdiction over this action pursuant to 28 U.SC, 1332.
- 2. Venue is proper in this District since there is diversity of all parties.

FIRST COUNT

- 1. On or about April 15, 2005, plaintiff, Rose Ann Novella, was the owner and operator of a motor vehicle, which was exiting the Newburgh Mall traveling in a southeasterly direction on Route 300, in the Township of Newburgh, County of Orange and State of New York.
- 2. At the time and place aforesaid, defendant, Carl Ferguson, was the operator of a motor vehicle owned by Rose Ferguson, which was traveling in a southerly

direction on Route 300, in the Township of Newburgh, County of Orange and State of New York.

- 3. At the time and place aforesaid, defendant, Rose Ferguson, owned, operated, maintained, and/or repaired the motor vehicle related to any allegations made in this Complaint.
- 4. At the time and place aforesaid, defendants Carl Ferguson and Rose Ferguson resided at 10 Estate Boulevard in the City of Newburgh, County of Orange, State of New York.
- 5. At the time and place aforesaid, defendants, John Doe 1-5 (fictitious names), were unknown persons or entitles who owned, operated, maintained, and/or repaired motor vehicles related to any allegations made in this Complaint.
- 6. At the time and place aforesaid, defendants, ABC Corporation 1-5 (fictitious names), who owned, operated, maintained and/or repaired motor vehicles related to any allegations made in this Complaint.
- 7. At the time and place aforesaid, defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), owed plaintiff a duty to operate, maintain, and/or repair the motor vehicle in a reasonably prudent and safe manner so as not to cause harm to the plaintiff.
- 8. At the time and place aforesaid, defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), breached said duty and so negligently and carelessly operated, maintained and/or repaired their motor vehicle so as to cause the motor vehicle being operated by the defendant aforesaid to strike plaintiff, Rose Ann Novella.

9. As a direct and proximate result of the aforesaid carelessness, and negligence of defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly and/or severally, and in the alternative, plaintiff was caused to suffer severe, multiple and permanent bodily injuries, has suffered and continues to suffer great pain and anguish, has incurred and will continue to incur expenses for medical care and treatment, has been and will continue to be unable to engage in his usual duties and activities, and as otherwise sustained damages.

WHEREFORE, plaintiff, Rose Ann Novella, demands judgment against defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly, severally and in the alternative, for damages, interest, costs of suit, and such other relief as the Court deems equitable and just.

SECOND COUNT

- Plaintiff, Rosario Novella, repeats and realleges the allegations of the First
 Count of the Complaint as though set forth more fully herein at length.
 - Plaintiff, Rosario Novella, is the husband of plaintiff, Rose Ann Novella.
- 3. As the result of the injuries suffered by his wife as aforesaid, plaintiff, Rosario Novella, was deprived of the services, society and consortium of his wife from the time of the accident until the present, and will in the future continue to suffer said loss of services, society and consortium.

WHEREFORE, plaintiff, Rosario Novella, demands judgment against defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly, severally and in the alternative, for damages, interest, costs of suit, and such other relief as the Court deems equitable and just.

JURY DEMAND

PLEASE TAKE NOTICE that the plaintiffs demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Plaintiffs hereby designate Jean Donoghue-Simon, Esquire as trial counsel on the within cause pursuant to the $\underline{R}.4:24-4$

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)

Pursuant to R. 4:5-1, the matter in controversy is not the subject of any other action pending in any Court or in any pending arbitration proceeding, nor is any arbitration proceeding contemplated. Plaintiffs are not aware of any other parties, which should be joined in this action.

LAW OFFICE OF JEAN DONOGHUE-SIMON Attorneys for Plaintiffs

DATED: April 10, 2007

MC DERMOTT & MC GEE, LLP
75 Main Street, Suite 305
P.O. Box 192
Millburn, NJ 07041
973-467-8080
Attorneys for Defendants: Carl Ferguson and Rose Ferguson

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY Civil Action No: 07-CV-1712 (GEB)

Plaintiff(s),

ROSE ANN NOVELLA and ROSARIO NOVELLA, her husband,

-VS-

Defendants,

CARL FERGUSON, ROSE FERGUSON, JOHN DOE 1-5 (fictitious names), ABC CORPORATION 1-5 (fictitious names), jointly, severally and in the alternative

ORDER TO CHANGE VENUE, PURSUANT TO CIV. R. 12(b)(3)

This matter having come before the Court on application of McDermott and McGee, LLP, attorneys for defendants, Carl Ferguson and Rose Ferguson, seeking an Order, pursuant to *Civ. R.*12(b)(3), changing the venue of the within litigation from the District of New Jersey to the Southern District of New York; and the Court having reviewed the matter; and good cause being shown;

It is on this _______ day of ________, 2007, ORDERED that the venue of

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this matter be changed from the Dis	trict Court of New Jersey to the Southern District of New York,
pursuant to Civ. R. 12(b)(3); and it i	s further;
ORDERED that a copy of	of this Order be served upon all counsel of record within days
from the date hereof.	
	U.S.D.J.
Unopposed	
Opposed	

MC DERMOTT & MC GEE, LLP
75 Main Street, Suite 305
P.O. Box 192
Millburn, NJ 07041
973-467-8080
Attorneys for Defendants: Carl Ferguson and Rose Ferguson

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY Civil Action No: 07-CV-1712 (GEB)

Plaintiff(s),

ROSE ANN NOVELLA and ROSARIO NOVELLA, her husband,

-VS-

Defendants,

CARL FERGUSON, ROSE FERGUSON, JOHN DOE 1-5 (fictitious names), ABC CORPORATION 1-5 (fictitious names), jointly, severally and in the alternative

CERTIFICATION OF SERVICE

CATHERINE A. STAMATO, being of full age, certifies as follows:

- 1. I am employed as a legal secretary for the Law Firm of McDermott and McGee, LLP, counsel for defendants, Carl Ferguson and Rose Ferguson, in the within matter.
- 2. On this date, I have filed, via electronic mail, the within Notice of Motion, supporting Certification and proposed form of Order with the Clerk's Office of the United States District Court, District of New Jersey, in Trenton, New Jersey. I understand that simultaneously, our adversary, Jean Donoghue-Simon, will also be receiving a copy of our Notice of Motion, supporting Certification and

Cases 7008: v 9001294 15 KUJH Doctomoranten 53 FFeld c 0050 172 2007 Paggel 77 obfl 77

proposed form of Order.

I hereby certify that the foregoing statements made by me are true. I am aware that if any are willfully false, I am subject to punishment.

Catherine A. Stamato

Dated: May 7, 2007

MC DERMOTT & MC GEE, LLP
75 Main Street, Suite 305
P.O. Box 192
Millburn, NJ 07041
973-467-8080
Attorneys for Defendants: Carl Ferguson and Rose Ferguson

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY
Civil Action No: 07-CV-1712 (GEB)

Plaintiff(s),

ROSE ANN NOVELLA and ROSARIO NOVELLA, her husband,

-vs-

Defendants,

CARL FERGUSON, ROSE FERGUSON, JOHN DOE 1-5 (fictitious names), ABC CORPORATION 1-5 (fictitious names), jointly, severally and in the alternative

BRIEF IN SUPPORT OF NOTICE OF MOTION FOR AN ORDER TO CHANGE VENUE, PURSUANT TO Civ.R. 12(b)(3)

John L. McDermott, Jr., Esq. (2779) On the Brief

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Statement of Material Facts	1 :
Statement of Law The Venue Of This Matter Should Be Changed to the Southern District of New York As That Forum Will Be More Convenient For The Parties And Witnesses	2
Conclusion	4

TABLE OF AUTHORITIES

	<u>Page</u>
28 U.S.C. 1332	1
28 U.S.C. §1391(a)	1
28 U.S.C. §1404(a)	1
Civ. R. 12(b)(3)	3
Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995)	1
Potluri v. Yalamanchili, Slip Copy, 2007 WL708908(D.N.J.)	1
Shutte v. Arm Co. Steel Corp., 431 F.2d22, 25(3d Cir. 1970)	1
White v. Smithkline Beecham Corp., Slip Copy, 2007 WL1237952 (E.D.Pa.).	1

STATEMENT OF MATERIAL FACTS

- This law suit arises out of a motor vehicle accident which occurred on April 15, 2005 on Route 300 at the intersection with the entrance/exit to the Newburgh Mall in Newburgh, New York. (See copy of police report annexed hereto as Exhibit "A".)
- 2. Plaintiffs Rose Ann Novella and Rosario Novella have filed suit in the United States

 District Court for the District of New Jersey, citing, as the basis for their suit, diversity of

 citizenship and amount in controversy in excess of sum or value of \$75,000.00 pursuant

 to 28 U.S.C. 1332. Plaintiffs also allege that the venue is proper in the District of New

 Jersey as there is diversity of all parties. (See copy of plaintiffs' Complaint annexed

 hereto as Exhibit "B".)
- Defendants, Carl Ferguson and Rose Ferguson, the only defendants, are both residents of Newburgh, New York. The incident, which gives rise to this litigation, occurred in Newburgh, New York. Additionally, the driver and occupant of the third vehicle involved in the accident, who are potential witnesses, live in Cornwall, New York. Also, the investigating police officer, Trooper J.P. Santopietro, of the New York State Police, works in the Newburgh, New York area. (See Exhibit "A".)

STATEMENT OF LAW

THE VENUE OF THIS MATTER SHOULD BE CHANGED TO THE SOUTHERN DISTRICT OF NEW YORK AS THAT FORUM WILL BE MORE CONVENIENT FOR THE PARTIES AND WITNESSES.

28 U.S.C. §1391(a) states: (a) civil action wherein jurisdiction is founded only on diversity of citizenship may, except as other-wise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim, occurred . . . , or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought." A defendant seeking transfer of venue has the burden to demonstrate that the case could have been brought initially in the proposed transferee forum, that the proposed transfer will be more convenient for the parties and witnesses, and that an interest of justice will be served by transferring the matter. 28 U.S.C. §1404(a); Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995); Shutte v. Arm Co. Steel Corp., 431 F.2d22, 25(3d Cir. 1970); White v. Smithkline Beecham Corp., Slip Copy, 2007 WL1237952 (E.D.Pa.); Potluri v. Yalamanchili, Slip Copy, 2007 WL708908(D.N.J.)

Here, the suit is based upon diversity of citizenship. Both defendants reside in Newburgh, New York which is situated within the Southern District of New York. The accident giving rise to this litigation occurred in Newburgh, New York. The investigating trooper and driver and passenger in the third vehicle involved in the incident, who are not named as parties, but may be potential witnesses, work and reside in New York. Therefore, transferring this matter from the District of New Jersey to the Southern District of New York will be more convenient for the parties and for the witnesses. The change of venue to the Southern District of New York will be in the interest of justice as, this accident

occurred in New York and, therefore, New York law would apply. Finally, there was nothing preventing plaintiffs from initially filing their Complaint in the Southern District of New York. In light of this, pursuant to *Civ. R. 12(b)(3)*, venue in this matter should be changed to the Southern District of New York.

CONCLUSION

For the reasons set forth herein, it is respectfully requested that an Order be entered changing venue from the District of New Jersey to the Southern District of New York.

Respectfully submitted,

MC DERMOTT & MC GEE, LLP

John L. McDermott, Jr. (2779)

Dated: May 15, 2007

Exhibit "A"

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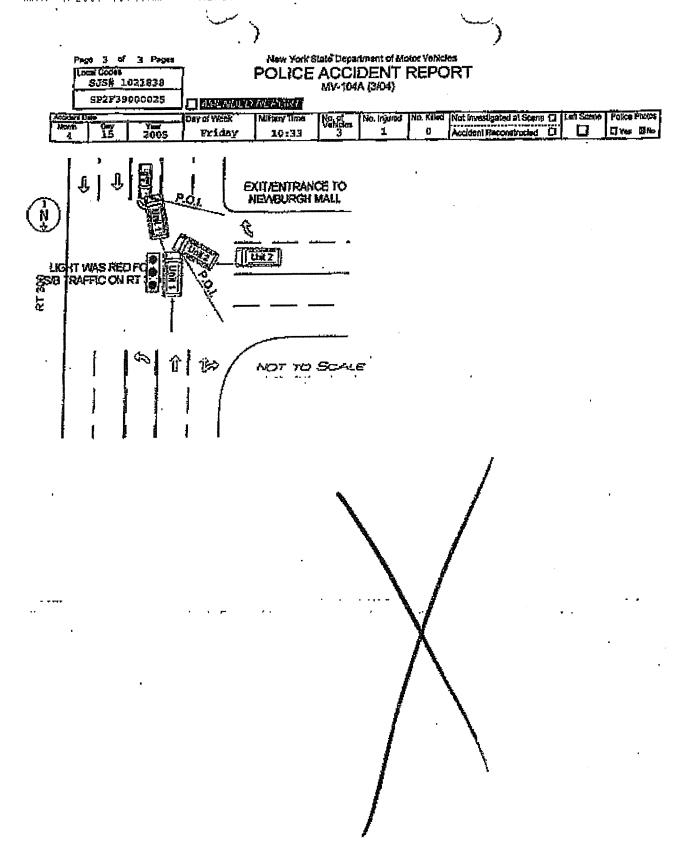


Exhibit "B"

LAW OFFICE OF JEAN DONOGHUE-SIMON
1433 HOOPER AVENUE, SUITE 212
P.O. BOX 4919
TOMS RIVER, NJ 08754-4919
732-286-6900
Attorneys for Plaintiffs, Rose Ann Novella and Rosario Novella

ROSE ANN NOVELLA and ROSARIO NOVELLA, her husband,

Plaintifils,

₩.

CARL FERGUSON and ROSE FERGUSON, JOHN DOE 1-5 (fictitious names), ABC CORPORATION 1-5 (fictitious names), jointly, severally and in the alternative,

Defendants.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Civil Action

COMPLAINT, JURY DEMAND AND DESIGNATION OF TRIAL COUNSEL

07-CV-1712 (GEB)

Plaintiffs, Rose Ann Novella and Rosario Novella, residing at 224 Lantern Place in the Borough of Tuckerton, County of Ocean, and State of New Jersey, by way of Complaint against defendants, say:

JURISDICTION AND VENUE

- 1. The Court has jurisdiction over this action pursuant to 28 U.SC. 1332.
- 2. Venue is proper in this District since there is diversity of all parties.

FIRST COUNT

- 1. On or about April 15, 2005, plaintiff, Rose Ann Novella, was the owner and operator of a motor vehicle, which was exiting the Newburgh Mall traveling in a southeasterly direction on Route 300, in the Township of Newburgh, County of Orange and State of New York.
- 2. At the time and place aforesaid, defendant, Carl Ferguson, was the operator of a motor vehicle owned by Rose Ferguson, which was traveling in a southerly

direction on Route 300, in the Township of Newburgh, County of Orange and State of New York.

- 3. At the time and place aforesaid, defendant, Rose Ferguson, owned, operated, maintained, and/or repaired the motor vehicle related to any allegations made in this Complaint.
- 4. At the time and place aforesaid, defendants Carl Ferguson and Rose Ferguson resided at 10 Estate Boulevard in the City of Newburgh, County of Orange, State of New York.
- 5. At the time and place aforesaid, defendants, John Doe 1-5 (fictitious names), were unknown persons or entitles who owned, operated, maintained, and/or repaired motor vehicles related to any allegations made in this Complaint.
- 6. At the time and place aforesaid, defendants, ABC Corporation 1-5 (fictitious names), who owned, operated, maintained and/or repaired motor vehicles related to any allegations made in this Complaint.
- 7. At the time and place aforesaid, defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), owed plaintiff a duty to operate, maintain, and/or repair the motor vehicle in a reasonably prudent and safe manner so as not to cause harm to the plaintiff.
- 8. At the time and place aforesaid, defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), breached said duty and so negligently and carelessly operated, maintained and/or repaired their motor vehicle so as to cause the motor vehicle being operated by the defendant aforesaid to strike plaintiff, Rose Ann Novella.

9. As a direct and proximate result of the aforesaid carelessness, and negligence of defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly and/or severally, and in the alternative, plaintiff was caused to suffer severe, multiple and permanent bodily injuries, has suffered and continues to suffer great pain and anguish, has incurred and will continue to incur expenses for medical care and treatment, has been and will continue to be unable to engage in his usual duties and activities, and as otherwise sustained damages.

WHEREFORE, plaintiff, Rose Ann Novella, demands judgment against defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly, severally and in the alternative, for damages, interest, costs of suit, and such other relief as the Court deems equitable and just.

SECOND COUNT

- Plaintiff, Rosario Novella, repeats and realleges the allegations of the First 1. Count of the Complaint as though set forth more fully herein at length.
 - Plaintiff, Rosario Novella, is the husband of plaintiff, Rose Ann Novella. 2.
- As the result of the injuries suffered by his wife as aforesaid, plaintiff, 3. Rosario Novella, was deprived of the services, society and consortium of his wife from the time of the accident until the present, and will in the future continue to suffer said loss of services, society and consortium.

WHEREFORE, plaintiff, Rosario Novella, demands judgment against defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly, severally and in the alternative, for damages, interest, costs of suit, and such other relief as the Court deems equitable and just.

JURY DEMAND

PLEASE TAKE NOTICE that the plaintiffs demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Plaintiffs hereby designate Jean Donoghue-Simon, Esquire as trial counsel on the within cause pursuant to the R.4:24-4

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)

Pursuant to R. 4:5-1, the matter in controversy is not the subject of any other action pending in any Court or in any pending arbitration proceeding, nor is any arbitration proceeding contemplated. Plaintiffs are not aware of any other parties, which should be joined in this action.

LAW OFFICE OF JEAN DONOGHUE-SIMON Attorneys for Plaintiffs

JEAN DONOGHUE MIMON, ESQ

DATED: April 10, 2007

MC DERMOTT & MC GEE, LLP 75 Main Street, Suite 305 P.O. Box 192 Millburn, NJ 07041 973-467-8080

Attorneys for Defendants: Carl Ferguson and Rose Ferguson

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY Civil Action No: 07-CV-1712 (GEB)

Plaintiff(s),

ROSE ANN NOVELLA and ROSARIO NOVELLA, her husband,

-VS-

Defendants,

CARL FERGUSON, ROSE FERGUSON, JOHN DOE 1-5 (fictitious names), ABC CORPORATION 1-5 (fictitious names), jointly, severally and in the alternative

CERTIFICATION OF SERVICE

CATHERINE A. STAMATO, being of full age, certifies as follows:

- 1. I am employed as a legal secretary for the Law Firm of McDermott and McGee, LLP, counsel for defendants, Carl Ferguson and Rose Ferguson, in the within matter.
- 2. On this date, I have filed, via electronic mail, the within Brief in support of our Notice of Motion to Change Venue with the Clerk's Office of the United States District Court, District of New Jersey, in Trenton, New Jersey. I further certify that on this date, I have sent a copy to our adversary, Jean Donoghue-Simon, Esq., counsel for plaintiffs, at 1433 Hooper Avenue, Suite

212, P.O. Box 4919, Toms River, NJ, 08754-4919, by First Class Mail.

I hereby certify that the foregoing statements made by me are true. I am aware that if any are willfully false, I am subject to punishment.

Catherine A. Stamato

Dated: May 15, 2007

NOT FOR PUBLICATIO	N UNITED STATES DISTRICT COU	RTRECEIVED
	DISTRICT OF NEW JERSEY	MAY 2 5 2007
		AT 8:30M WILLIAM T. WALSH CLERK
NOVELLA, et al.,	:	CLERK
Plaintiffs,	: Civ. No	o. 07-1712 (GEB)
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FERGUSON, et al.,	:	
Defendants.	<u>-</u>	

BROWN, Chief Judge

This matter having come before the Court upon the Motion for an Order to Change Venue of Carl Ferguson, Rose Ferguson, John Doe 1-5, ABC Corporation 1-5 (collectively "Defendants"); and Plaintiffs Rose Ann Novella and Rosario Novella (collectively, "Plaintiffs") having consented to the change of venue; and the Court having fully reviewed all documents filed and submitted;

ORDERED that Defendants' Motion for Change of Venue is GRANTED; and ORDERED that this case be transferred to the Southern District of New York.

ARRETT E. BROWN, JR., U.S.D.J.

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY OFFICE OF THE CLERK

402 E. State Street TRENTON, NEW JERSEY 08608 NEWARK OFFICE

50 WALNUT STREET NEWARK, NJ 07101

WILLIAM T. WALSH Clerk January 4, 2008

TRENTON OFFICE 402 FAST STATE STREET ROOM 2020 TRENTON, NJ 08608

REPLY TO: TRENTON

United States District Court
Southern District of New York
U.S. Courthouse
40 Foley Square
New York City, NY 10007-1581

Re: ROSE ANN NOVELLA, et als. vs. CARL FERGUSON, et als. Civil Action No. 07-1712 (GEB)

Dear Clerk:

The above-captioned case has been transferred to your court pursuant to the enclosed Certified copy of the Order dated October 4, 2006. You can obtain the original record by accessing CM/ECF. Kindly acknowledge receipt on the duplicate of this letter, which is provided for your convenience.

Very truly yours,

WILLIAM T. WAUSH, Clerk

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By: Sharon D. Syphrett

Deputy Clerk

Instructions for Retrieving Electronic Case Files